

(ii) November 5, 1990, that the surety of the mining operator became insolvent during such period and that, as of November 5, 1990, funds immediately available from proceedings relating to such insolvency or from any financial guarantee or other source are not sufficient to provide for adequate reclamation or abatement at the site; and

(3) The site qualifies as a priority 1 or 2 site pursuant to Section 403(a)(1) and (2) of the Act. Priority will be given to those sites that are in the immediate vicinity of a residential area or that have an adverse economic impact upon a community.

(e) Any State or Indian tribe may expend funds may available under paragraphs 402(g)(1) and (5) of the Act (30 U.S.C. 1232(g)(1) and (5)) for reclamation and abatement of any site eligible under paragraph (d) of this section, if the State or Indian tribe, with the concurrence of the Secretary, makes the findings required in paragraph (d) of this section and the State or Indian tribe determines that the reclamation priority of the site is the same or more urgent than the reclamation priority for the lands and water eligible pursuant to paragraphs (a), (b) or (c) of this section that qualify as a priority 1 or 2 site under Section 403(a) of the Act (30 U.S.C. 1233(a)).

(f) With respect to lands eligible pursuant to paragraph (d) or (e) of this section, monies available from sources outside the Abandoned Mine Reclamation Fund or that are ultimately recovered from responsible parties shall either be used to offset the cost of the reclamation or transferred to the Abandoned Mine Reclamation Fund if not required for further reclamation activities at the permitted site.

(g) If reclamation of a site covered by an interim or permanent program permit is carried out under the Abandoned Mine Land Program, the permittee of the site shall reimburse the Abandoned Mine Land Fund for the cost of reclamation that is in excess of any bond forfeited to ensure reclamation. Neither the Secretary nor a State or Indian tribe performing reclamation under paragraph (d) or (e) of this section shall be held liable for any violations of any performance standards or reclamation requirements specified in

Title V of the Act nor shall a reclamation activity undertaken on such lands or waters be held to any standards set forth in Title V of the Act.

(h) Surface coal mining operations on lands eligible for remining pursuant to Section 404 of the Act shall not affect the eligibility of such lands for reclamation activities after the release of the bonds or deposits posted by any such operation as provided by § 800.40 of this chapter. If the bond or deposit for a surface coal mining operation on lands eligible for remining is forfeited, funds available under this title may be used if the amount of such bond or deposit is not sufficient to provide for adequate reclamation or abatement, except that if conditions warrant the Secretary shall immediately exercise his/her authority under Section 410 of the Act.

[47 FR 28596, June 30, 1982, as amended at 59 FR 28171, May 31, 1994]

§ 874.13 Reclamation objectives and priorities.

(a) Reclamation projects should be accomplished in accordance with OSM's "Final Guidelines for Reclamation Programs and Projects" (45 FR 14810-14819, March 6, 1980).

(b) Reclamation projects shall reflect the priorities of Section 403(a) of the Act (30 U.S.C. 1233). Generally, projects lower than a priority 2 should not be undertaken until all known higher priority coal projects either have been accomplished, are in the process of being reclaimed, or have been approved for funding by the Secretary, except in those instances where such lower priority projects may be undertaken in conjunction with a priority 1 or 2 site in accordance with OSM's "Final Guidelines for Reclamation Programs and Projects."

[59 FR 28171, May 31, 1994]

§ 874.14 Utilities and other facilities.

(a) Any state or Indian tribe that has not certified the completion of all coal-related reclamation under Section 411(a) of the Act, 30 U.S.C. 1241(a), may expend up to 30 percent of the funds granted annually to such State or Indian tribe pursuant to the authority in Sections 402(g) (1) and (5) of the Act for